RECENT AMERICAN DECISIONS

Circuit Court of the United States, District of Massachusetts.

MATTHEWS v. THE MASSACHUSETTS NATIONAL BANK.

Cashiers of a bank are held out to the public as having authority to act according to the general usage, practice and course of business conducted by the bank. Their acts, within the scope of such usage, practice and course of business, will in general bind the bank in favor of third persons possessing no other knowledge.

One of the ordinary and well-known duties of the cashier of a bank is the surrender of notes and securities upon payment, and his signature to the necessary transfers of securities or collaterals when in the form of bills of exchange, choses in action, stock certificates, or similar securities for loans, which are personal property, is an act within the scope of the general usage, practice and course of business in which cashiers of a bank are held out to the public as having authority to act, and is therefore binding on the bank.

A certificate of stock accompanied by an assignment and power of attorney executed in blank has a species of negotiability well recognised in commercial transactions and judicial decisions. The assignee is entitled to fill up the blank with his own name, and the assignor is estopped from denying the genuineness of the certificate on the antecedent signatures.

Where a bank loaned money to one Coe upon a certificate of shares in the capital stock of a railway company, which had been altered from two to two hundred by the debtor, after he had procured it to be issued by the company, in the name of the bank, "as collateral," and upon the payment of the debt the cashier of the bank signed a blank assignment on the back of the certificate, with the view of conveying the collateral to Coe, supposing it to be genuine, and Coe subsequently procured a loan of the plaintiff to the amount of $25,000, upon the pledge of the same certificate so assigned in blank by the cashier, it was held the plaintiff was entitled to recover of the bank what damages he had thereby sustained.

CASE for damages. The Massachusetts National Bank loaned to one James A. Coe twenty-two thousand dollars payable on call with interest, taking from him his memorandum of indebtedness for that sum with, as collateral security therefor, what purported to be a certificate of two hundred shares of the capital stock of the Boston and Albany Railroad Company issued to said Massachusetts National Bank, as collateral.

This instrument was originally a genuine certificate for two shares of the capital stock of the Boston and Albany Railroad Company issued to H. E. Coe, but by false and forged erasures and interlineations had been so altered as to purport to be a certificate for two hundred shares of its stock issued by said railroad corporation to the Massachusetts National Bank, as collateral.

The bank received the said certificate in good faith and without any suspicion of its fraudulent character, and in supposed fulfilment of the promise of James A. Coe to give as security for the loan aforesaid two hundred shares of the capital stock of said railroad corporation.

Subsequently, upon payment by said Coe to the bank, he received back his memorandum of indebtedness, and the cashier of the bank, for the purpose and with the intention of restoring the collateral to Coe, returned to him the fraudulent certificate, with the usual printed form of transfer on the back thereof, signed by H. K. Frothingham, cashier of said bank, in blank.

About two weeks after the surrender by the bank of this certificate to Coe, with the transfer in blank of the cashier on the back of it, the plaintiff, Matthews, pursuant to his agreement to loan Coe twenty-five thousand dollars on call with interest, received from Coe, in good faith, the said fraudulent certificate with the blank assignment on the back thereof, supposing the same to be a genuine certificate for two hundred shares of said stock issued by the corporation and duly transferred and assigned so as to enable him to obtain a new certificate therefor in his own name, and on receipt thereof loaned the sum of twenty-five thousand dollars. The signature of the cashier was well known to Matthews, who correctly supposed the signature on the blank assignment to be genuine. Coe was tried and convicted for obtaining money by false pretences, and indictments for forgery are now pending against him, and he has been declared bankrupt. The next day, or very soon after the day when the money was loaned by Matthews, the fact first became known to plaintiff and defendant of the fraudulent alteration of the certificate before it came into possession of defendant, and plaintiff thereupon notified the bank that he should hold it responsible for any loss sustained by him by reason of the premises. This action was brought for the recovery of the damages thus sustained.

Dwight Foster and *G. W. Baldwin*, for plaintiff.

J. P. Converse and *Edw. A. Kelly*, for defendant.

SHEPLEY, Circuit J.—The real question presented in this case is whether the bank by signing the blank transfer has so far war-

ranted the genuineness of the certificate that it is estopped from setting up the forgery as a defence to this action.

Defendant denies that the cashier had authority or right to bind the bank by the contract declared on.

Cashiers of a bank are held out to the public as having authority to act according to the general usage, practice and course of business conducted by the bank. Their acts, within the scope of such usage, practice and course of business, will in general bind the bank in favor of third persons possessing no other knowledge: *Morse et al.* v. *Mass. National Bank*, U. S. C. Court, Mass. District; *Minor* v. *The Mechanics' Bank*, 1 Peters 70; *Merchants' Bank* v. *State Bank*, 10 Wallace 604. One of the ordinary and well-known duties of the cashier of a bank is the surrender of notes and securities upon payment, and his signature to the necessary transfers of securities or collaterals when in the form of bills of exchange, choses in action, stock certificates, or similar securities for loans, which are personal property, is an act within the scope of the general usage, practice and course of business in which cashiers of a bank are held out to the public as having authority to act. Undoubtedly the ordinary duties of a cashier do not comprehend the making of a contract which involves the payment of money, without an express authority from the directors, unless it be such as relates to the usual and customary transactions of the bank. But the transfer of certificates of stock held as collateral, is certainly one of the usual and customary transactions of banks, and the public would be no more likely to require evidence of a special authority to the cashier to make such transfer than of a special authority to draw checks on other banks, or to perform any other of the daily duties of his office.

The signature of the cashier must therefore be considered as the signature of the bank, and the question returns whether such blank assignment on the back of the certificate by the bank be so far a warranty of the genuineness of the certificate that the bank is estopped from setting up the forgery as a defence. In the case of forged negotiable instruments it is well settled that the endorser warrants that the instrument itself and the antecedent signatures thereon are genuine: Story on Promissory Notes, § 135; *State Bank* v. *Fearing*, 16 Pick. 533; *Hortsman* v. *Henshaw*, 11 Howard 184; *Cricklow* v. *Parry*, 2 Camp. 182; *Canal Bank* v. *Bank of Albany*, 1 Hill 287. The endorser's liability in these cases is

properly placed upon the ground of estoppel. "This proceeds," says Judge STORY, "upon the intelligible ground that every endorser undertakes that he possesses a clear title to the note deduced from and through all the antecedent endorsers, and that he means to clothe the holder under him with all the rights which by law attach to a regular and genuine endorsement against himself and all the antecedent endorsers. It is in this confidence that the holder takes the note without further explanation, and if each party is equally innocent and one must suffer, it should be the one who has misled the confidence of the other, and by his acts held out to the holder that all the endorsements are genuine and may be relied on as an indemnity in case of the dishonor thereof." This is a statement of the grounds upon which the rule of law rests as applicable to negotiable instruments, but the reasoning would seem to apply with equal force and pertinency to the case of a transfer of a certificate of stock by endorsement in blank. Stock certificates are sold in open market like other securities and form the basis of commercial transactions. In the language of Mr. Justice DAVIS in *Bank* v. *Lanier*, 11 Wallace 377, "Although neither in form or character negotiable paper, they approximate to it as nearly as practicable." In *Leitch* v. *Wells*, 48 N. Y. 613, it is said, "Since the decision of the case *McNeil* v. *Tenth National Bank*, certificates of stock, with blank assignments and powers of attorney attached, must be nearly as negotiable as commercial paper." The common practice of passing the title to stock by delivery of the certificate, with the blank assignment and power, has been repeatedly proved and sanctioned in cases which have come before the courts in New York. In *New York & New Haven Railroad Co.* v. *Schuyler*, 34 N. Y. 41, the rights of parties claiming under such instruments were fully recognised by the court, and such mode of transfer was shown to be the common practice in the city of New York. It is well settled that the form of assignment printed on the back of stock certificates, when signed in blank, may be filled up by a subsequent purchaser of the stock: *Kortright* v. *The Commercial Bank of Buffalo*, 20 Wend. 91, and 22 Wend. 348; *Bridgeport Bank* v. *New York & New Haven Railroad Co.*, 30 Conn. 273. The certificate in this case, as it came from the bank, contained on the same piece of paper, and on the back of the certificate a blank assignment, which was all that was necessary to transfer the title of the stock as between the parties.

The defendant must, therefore, be held to have intended and agreed that whoever should present the certificate so issued from the bank, with the assignment executed in blank, should be entitled to fill up the blanks with his own name, and to have a transfer of the stock made to himself on the books of the company. The certificate accompanied with the transfer, executed in blank, has a species of negotiability of a peculiar character, but one well recognised in commercial transactions and judicial decisions, and absolutely essential in the usage and necessities of modern commerce to make such certificates available in commercial transactions. Even when such blank assignments, or powers of attorney to transfer stock, are under seal, the blanks may be filled up according to the agreement of the parties at the time: *Bridgeport Bank* v. *New York & New Haven Railroad Co.*, 30 Conn. 274–5; Redfield on Railways, § 35, and cases cited. The decisions to the contrary in the English courts have not been followed in this country, and they were influenced not merely by a rigid adherence to the technical rules of the common law in relation to instruments under seal, but by the policy of the stamp system. But the case of *Walker* v. *Bartlett*, 18 C. B. 845, (86 E. C. L. R.), and later English decisions, recognise the validity of blank transfers of stock, and that such transfers of stock impose upon the holder of them the obligation to pay calls upon the shares while they remain his property. In *Kortright* v. *The Buffalo Commercial Bank*, 20 Wendell 93, speaking of the filling up of a blank transfer of stock and power of attorney, NELSON, C. J., after stating that this is in strict conformity with the universal usage of dealers in the negotiation and transfer of stocks according to the proof in the case, goes on to say, "Even without the aid of this usage, there could be no great difficulty in upholding the assignment. The execution in blank must have been for the express purpose of enabling the holder, whoever he might be, to fill it up. If intended to have been filled up in the name of the first transferee, there would have been no necessity for its execution in blank—Barker might have completed the instrument."

The right to fill the blank in a blank transfer of stock is recognized by the Supreme Court of Massachusetts in *Sewall* v. *The Boston Water Power Co.*, 4 Allen 277.

Matthews clearly had the right, having advanced the sum of twenty-five thousand dollars upon the supposed security of this blank assignment of stock, to fill up the blank with his own name

and with the place of his residence, and whatever was necessary to make the instrument complete as an assignment and transfer to him of the shares described in the certificate. The case finds that the cashier signed the assignment in blank for the *purpose and with the intention of restoring the pledge to Coe.* But even if he went further, and agreed with Coe that Coe should fill the blank with his own name, such private understanding between him and Coe would not have affected the rights of third parties who parted with their property in good faith without negligence upon the faith of the certificate of the cashier that the bank undertook to assign, and did assign, to whoever might be the lawful holder of the instrument, the amount of stock described therein.

As above quoted from C. J. NELSON: "If intended to have been filled up in the name of the first transferee, there would have been no necessity for its execution in blank"—Frothingham "might have completed the instrument." What possible explanation can be given of the course of the cashier in giving to Coe an assignment in blank rather than a transfer to Coe himself, other than to enable Coe to dispose of the certificate so that the holder could take his title directly from the bank, and that the instrument might be used according to the well-known usage of dealing with stock certificates, passing from one purchaser to another without the inconveniences and delays consequent upon manifold transfers on the records of the corporation? If the bank intended to limit the assignment to a particular assignee, or to a less number of shares than the number described in the certificate, the limitation should have appeared in the assignment. The assignment in blank purports to assign what is described in the certificate to the lawful holder, whoever he may be who may fill the blank. The signature is given for the purpose of transferring title, and whenever the blank is filled a contract of sale is established between the party who has signed the blank assignment and the person whose name is rightfully filled in as assignee.

It is contended in behalf of the bank that the transfer in blank created no liability or obligation on the part of the bank to Matthews, because the circumstances under which the certificate was received by the bank and surrendered to Coe indicate clearly that the act of the cashier in signing and transferring the certificate to Coe was performed with the intention of restoring the pledge to Coe in discharge of the duty of the bank as pledgee after the pur-

poses of the pledge were answered, and not with any purpose of a sale of the certificate or the stock supposed to be represented by it. But there is nothing in the case to show any knowledge on the part of Matthews of any such intention on the part of the cashier. The certificate purports to be a certificate that the bank held the shares as collateral, but does not show that they were collateral for a debt of *Coe's* to the bank. Such a certificate of stock with the transfer in blank of a responsible bank might, in the ordinary course and usage of dealing in stocks, pass through the hands of many successive purchasers. The possession of the certificate would afford no indication that the holder of it was the person who had originally transferred it to the bank as collateral. If Coe had consented to a sale by the bank of the collateral to pay his debt, or if the bank had in any way acquired the right to sell it and had sold it, if the assignment had been in blank the purchaser would have been in the same condition, and Matthews, in dealing with such a purchaser, would have received no better evidence of title against the bank than he received from Coe. Had the bank desired to sell this stock, and placed it in the hands of a broker with a blank transfer in the usual course of business, Matthews in buying from the broker would have received no better evidence of title against the bank than in the present case. The mere words "as collateral" in the instrument do not tend to put the purchaser on inquiry, except so far as relates to the authority of the bank to dispose of the collateral as between the bank and its debtor. If this inquiry had been made it would only have resulted in the information that the assignment was made in its actual form by the joint act and consent of the debtor and the bank. The name of the pledgor was not stated in the certificate, as is required by the Statute of Massachusetts, Genl. Statutes of Massachusetts, ch. 68, sect. 13. In fact, if Matthews had gone to the bank to make inquiries, he could only have learned that Coe having paid his debt to the bank, the certificate had been surrendered to him by the bank with a transfer in blank. There would have been nothing in this information to lead him to doubt the genuineness of a certificate to which the bank had given currency by its signature, and on the faith of which he would have learned the bank had loaned twenty thousand dollars, which had been paid. The bank or the cashier did not then doubt the genuineness of the instrument, and no inquiry at the bank would have

inspired doubts in the mind of Matthews, there being no such doubts in the minds of the officers of the bank. Nor is it perceived how the bank can contend with any show of reason that Matthews was negligent in not inquiring at the office of the railway corporation. If the duty of making such an inquiry was incumbent on any one, it was surely incumbent on the bank to ascertain the genuineness of the instrument before they gave currency to it, and lulled suspicion and doubt by the responsibility of their own signature. The answer to all the positions taken by the defendant as to notice to Matthews from the words "as collateral" in the instrument, is that there is nothing to connect Coe with those words. There is nothing on the face of the paper, and there was nothing in the fact of the possession of the instrument by Coe to show that he was the person for whose debt the stock was held as collateral.

Had not Matthews a right to suppose, upon receiving this certificate authenticated by the signature of the bank, that they had obtained the certificate themselves from the railroad company in the usual way, thus preventing the possibility of fraud or forgery before receiving as collateral for a loan, and before authenticating it with their signature? It is difficult to see in what respect Matthews was negligent.

The defendant, on the other hand, negligently placed confidence in Coe to obtain a transfer from the railroad company of the two hundred shares on which they loaned the sum of twenty-two thousand dollars, instead of taking the certificate directly from the company. But the negligent act which especially imposes upon them a liability in this case, is that they delivered the forged instrument to Coe, authenticated by their signature in blank to a transfer, thus giving to it a currency and negotiability which it would not have possessed had they made the transfer directly to Coe. Thus the bank put it in the power of Coe to commit the fraud on Matthews on which this suit is founded.

In *McNiel* v. *Tenth National Bank*, 46 N. Y. 325, the language of the opinion is precisely applicable to a case like the present. "Such then being the nature and effect of the documents with which the plaintiff intrusted his brokers, what position does he occupy towards persons who, in reliance upon those documents, have, in good faith, advanced money to the brokers or their assigns on a pledge of the shares? When he asserts his title, and claims as against them

that he cannot be deprived of his property without his consent, cannot he be truly answered that by leaving the certificate in the hands of his brokers, accompanied by an instrument bearing his own signature, which purported to be executed for a consideration, and to convey the title away from him, and to empower the bearer of it irrevocably to dispose of the stock, he in fact 'substituted his trust in the honesty of his brokers for the control which the law gave him over his own property,' and that the consequences of a betrayal of that trust should fall upon him who reposed it, rather than upon innocent strangers, from whom the brokers were thereby enabled to obtain their money?" If the bank only intended to revest in Coe whatever it acquired from him, it would have been perfectly easy to have limited the transfer to that extent only. A private understanding that such was the intention between Coe and the cashier could not affect the rights of those who, if misled, were misled by the acts of the bank. If the bank, by giving Coe the transfer in blank with their signature, exhibited him to the money-dealing public as having the competent right of pledge and disposal with all the usual evidences of such right, it substituted their trust in the honesty of Coe for the control which the bank should have exercised itself over the transfer of the instrument, and should suffer the loss consequent upon his betrayal of the trust, rather than to suffer it to fall upon an innocent stranger.

If the conditions upon which the apparent right of control which the bank conferred upon Coe were not expressed on the face of the instrument, but remained in confidence between the bank and Coe, the case is not distinguishable in principle from that of an agent who receives secret instructions qualifying or restricting an apparently absolute power: *Jarvis* v. *Rogers*, 15 Mass. 389; *Pickering* v. *Burk*, 15 East 38; *Fatman* v. *Loback*, 1 Duer 354; *N. Y. & N. H. R. R. Co.* v. *Schuyler*, 34 N. Y. 41.

One of two innocent parties must suffer in this case by the fraud of Coe. Under similar circumstances, courts have repeatedly held that the party must suffer who has exhibited the greater degree of negligence. The leading case on the endorsement of bills of lading, *Lickbarrow* v. *Mason*, 2 Term 63, is an authority on this point. See, also, *Lobdell* v. *Baker*, 3 Met. 469; *Polhill* v. *Waller*, 3 Barn. & Adol. 114.

The bank is precluded from setting up the fact of the forgery of

the instrument, because it would be a wrong on its own part and an injury to others whose conduct has been influenced by the acts and omissions of the bank. SWAYNE, Justice, in *Merchants' Bank* v. *State Bank*, 10 Wall. 645, says: "Estoppel *in pais* presupposes an error or a fault, and implies an act in itself invalid. The rule proceeds upon the consideration that the author of the misfortune shall not himself escape the consequences and cast the burden upon another." Mr. Justice CLIFFORD recognises this principle in his dissenting opinion in that case: "If a bank may be held liable in any case upon a certificate of their cashier that a check is good when they have no funds of the drawer, it is not because the cashier is authorized to make such certificate, but because the bank is bound by his representation, notwithstanding it is false and unauthorized." An estoppel is a salutary rule which prevents a man from proving that to be false which he has once represented to be true, when others have acted on the faith of his representation.

The fact that Matthews has also a right of action against Coe, who is a convict and a bankrupt, does not preclude him from a remedy against the bank: *Gurney* v. *Wormsley*, 4 El. & Bl. 133.

Upon the facts as agreed in this case, the plaintiff is entitled to judgment, and according to the agreement of parties, the case is to be referred to an auditor to assess the damages.

The foregoing opinion, although able, learned and plausible, does not seem to us entirely beyond question in its conclusions. It seems difficult to maintain the argument in its application to the facts of the case, without recognising certificates of stock, endorsed in blank, or with power to transfer, as negotiable paper in the fullest sense. But this is a proposition which the decided cases will, in no sense, justify. The English courts, in the late case of *Crouch* v. *Credit Foncier*, L. R., 8 Q. B. 374, after full review of all the cases, refused to recognise debentures issued by public corporate companies, in the form of negotiable instruments, made payable to bearer, for the purpose of passing current in the market, as entitling the *bonâ fide* purchaser for value to hold them against the equities of former holders. In this case the debentures, which are the same as our railway bonds or notes, were under the seal of the company, and had been stolen from the owner and purchased in the market, as above stated; but the court held the purchaser could not recover. The former English cases are here carefully reviewed, and the conclusion reached that no such security is negotiable in any such sense as to exclude the equities of former holders by a *bonâ fide* purchase for value; and it is here declared that the custom of the dealers on the stock exchange, or of merchants and commercial men generally, to treat such securities as negotiable in the strict sense will not have the effect to make them so, since an express contract on the part of the maker

to pay the same to any *bonâ fide* assignee for value, without regard to the equities of former holders, would be a void contract as to the holders of such equities, and no custom could have a greater effect than an express contract. In the light of this case, therefore, the custom of dealers in the market to treat certificates of shares, or any other security, as negotiable, would be inoperative to produce such result. This case, decided within the last year, must be decisive of the present state of the English law. And after so thorough a review of the English cases by so learned and able a judge as Mr. Justice BLACKBURN, it would be idle for us to attempt to throw any further light upon the question, so far as the English law is concerned.

We are aware that the American courts have come to a different conclusion in regard to railway and other corporate bonds or notes. It is abundantly settled here that all such bonds are negotiable in the strict sense of excluding all equities of former holders, by a *bonâ fide* sale for value: 2 Redf. Railways, § 239, p. 531 *et seq.*, and the numerous cases there cited, which we have referred to in this form to save repetition. But no such rule has ever been extended to the sale of shares in the capital stock of railways and other joint stock corporations. Notwithstanding the most strenuous efforts of speculators in stocks to have them recognised as negotiable, in order to exclude the equities of former owners, and thus enable them to buy them safely of thieves and burglars and other fraudulent operators in the market, the courts have strenuously refused to endorse their schemes, and we have good hope that they will continue to resist all such efforts to the end; for we regard all advance in the direction of making stocks negotiable, so as to enable them to be sold without showing a clear title, as against every one, as a movement in favor of the protection of dealers with dishonest holders. And it would, no doubt, be a great protection to honest holders of state or national securities, as well as of municipal, county and corporate bonds, all of which are now negotiable, the same as bank bills, if that negotiability could be recalled and destroyed. Burglars and thieves do not take securities not negotiable, since they could not dispose of them, and it would very much increase the value of these bonds for mere investment if they were protected from the risk of felonious taking. And the slight depreciation in the market on account of securities not being negotiable, is of no account, in comparison with the risk of keeping safely such securities as are negotiable under the refined improvements of the art of burglarious and other felonious abstractions. For the refinements in crime will keep pace with the advancement of civilization.

The American cases of authority are almost, if not quite, uniform in treating certificates of stock in every form as not negotiable. This was held in *Shaw* v. *Spencer*, 100 Mass. 382, s. c. 8 Am. Law Reg., N. S., 219. And the arguments drawn from the practice or custom of issuing certificates of stock in blank, or with blank endorsements, or blank powers, to be filled with the names of purchasers, and to transfer such certificates from hand to hand, without inquiry into the title of the holders, is here well answered by FOSTER, J., in delivering the opinion: "A usage to disregard one's legal duty, to be ignorant of a rule of law and to act as if it did not exist, can have no standing in the courts." The same rule, as to the negotiability of stock certificates, was held in *Sewall* v. *Boston Water Power*, 4 Allen 277. And in *Mechanics' Bank* v. *N. Y. & N. H. Ry.*, 13 N. Y. 599, it is distinctly declared that certificates of stock do not partake

of the nature of negotiable instruments, and that the *bonâ fide* assignee, with the power of transfer, "takes the certificate subject to the equities which exist against the assignor."

The proper place, and the only proper place, for the purchaser of shares in a joint-stock corporation to make inquiry in regard to the genuineness of the certificate and the validity of the title, is of the books of the company: and any information obtained from that source may be relied upon, as it will bind the company to pay the value of the stock to the purchaser of the apparent owner, even when the shares have been transferred upon the books of the company, by means of a forged power from the real owner: *Davis* v. *The Bank of England*, 2 Bing. 393.

This view would seem to end the argument as against the plaintiff in the principal case, since in taking the certificate of Coe, he would only acquire what rights Coe possessed under the assignment from the defendants, which of course would be none at all, since there could be nothing more absurd than to suppose the contrary. The idea that one who is so far imposed upon as to accept a forged certificate of stock as collateral security for a large advance of money, and finally obtains payment of the loan from the borrower without detecting the forgery, and who endorses the certificate in blank in order to restore the collateral to the borrower, thereby becomes responsible to the forger for its genuineness, is too preposterous to gain credence anywhere. But it seems to be supposed that there was some mystery about the endorsement in blank, whereby the defendants undertook, on the face of the paper, to guarantee its genuineness to third persons ignorant of the facts. Upon general and well-recognised principles of law, no such consequence could result from any blank endorsement, if made without consideration, upon any paper not negotiable. A blank endorsement upon negotiable paper acquires at once, upon its very face, an artificial and conventional force and import, which can never be recalled or explained as against a *bonâ fide* purchaser for value. But such an endorsement upon any paper not negotiable acquires no such conventional force, even in the hands of a *bonâ fide* purchaser. Upon a non-negotiable paper, a blank signature imports just what the parties are legally bound to understand its import to be from the facts and circumstances inducing the making of such signature. If made to enable the holder to collect dividends upon the shares, or to convey the title to one who had procured it in the name of another, in order to use it as collateral, and who had cancelled the debt, it would impose no obligation upon the maker. But if made upon the sale of the debt with the collaterals, it would import undoubtedly a guaranty of the genuineness of the collaterals. But even when made in the general form of all blank endorsements, not indicating to a third party, who became a subsequent purchaser, *bonâ fide* and for value, whether such endorsement in blank were made for value, so as to bind the endorser, or whether made without value, so as not to impose any obligation: under these circumstances of uncertainty it is not competent for any future purchaser or receiver for value to act blindly, upon the mere form of the blank general endorsement, without investigation. And if he do so act, it must be at his own peril. If he is not willing to trust implicitly to the honesty and fairness of the holder, he must make inquiry at the only proper place to obtain reliable information, the books of the company issuing such certificate, or purporting to have done so. Nor is the purchaser of such certificate at liberty to supplement the credit

of the holder by the fact that bankers of good credit have before made advances upon the certificate, or upon the probability that such bankers would not have made such advances without having satisfactory assurance of the genuineness of the certificate. No doubt we all act more or less upon such grounds; but we do it, of course, at our own risk and without any legal claim upon the party to make good any losses we may sustain by such voluntary trust.

The only other ground, as it seems to us, upon which the plaintiff can prefer any just claim to recover, is that the plaintiff has been misled by Coe, through some agency or omission of the defendants. The opinion seems to convey the impression throughout that there is something in the form of this assignment, being in blank, imposing a higher obligation upon the defendants than if it had been filled with the name of Coe. We know of no authority for giving blank signatures upon non-negotiable instruments any greater force than if filled up as the parties understood they should be, and the cases are almost innumerable declaring that no blank signature upon an instrument not negotiable can be filled up by any future holder, except in the manner it was agreed or understood that it should be filled at the time it was made. This being the law, which of course the plaintiff was bound to know, he could not have been legally misled by the endorsement of the cashier being in blank. And if he was so misled, it must have been by placing a construction upon the facts which the law will not justify. We do not deem it incumbent upon any one to make formal answer to any suggestion from the New York courts, or the national courts, that business men and commercial men—by which we understand dealers on the stock exchange—have treated these stock certificates as approximating very nearly—as nearly as possible—to that of commercial paper in the form of negotiable instruments. We need only refer to the language of Mr. Justice FOSTER, before recited, in answer to any such suggestion. There is no intermediary or transitive state between negotiable and non-negotiable instruments. All contracts or instruments or papers creating indebtedness or rights of action, are either negotiable or not so. And if anything is fully settled in the law, it is that certificates of stock are not negotiable, and that he who deals with them is bound to know that he takes them subject to all the rights of former holders.

But it seems to us that the claim in this case, that there was anything in the defendants' connection with this certificate that was in its nature calculated to mislead any one in the plaintiff's position, or which in fact really did mislead him, in regard to the controlling facts in the case, rests upon a false construction of the facts. The plaintiff knew of course why the certificate was made directly to the plaintiff. This must have been done in compliance with the statute. And there is nothing in this indicating that the defendants had any agency in procuring the certificate to be issued, but the contrary, since it appeared on its face to have issued as a collateral security to the defendants, which the debtor would naturally procure, as it issued for his benefit. And the pretence that the plaintiff was or might have been misled by the endorsement not being filled with the name of Coe, or by his not knowing that it was agreed the blank should be filled with the name of Coe, seems to us rather specious than sound. The plaintiff understood of course that the bank took it as collateral from some debtor, and that they assigned it in order to convey the title to some one, and this could

only be either to the debtor pledging it, after paying the debt, or else to some one who purchased it of the bank, either with the security for which it was pledged or for the purpose of paying the debt to the bank. The most natural construction of such a transaction upon its face, undoubtedly was that the endorsement was made to restore the title to the debtor, since that is the more common mode of transferring collaterals by banks, and the only one which would come fairly within the ordinary employment of the cashier. The disposing of collaterals in any other mode would seem to require the action of the directors. The paper, therefore, imported on its face to be a re-assignment of the certificate to the debtor, upon payment of the debt to the cashier. And who would the plaintiff naturally suppose the debtor to be? Why naturally the man who desired to pledge the same collateral for another loan. We therefore insist there was nothing in this whole transaction, as understood by the plaintiff at the time he accepted this certificate or collateral, calculated to mislead him, except his confidence in the careful business habits of the defendants, and that is nothing for which they are responsible to any one but themselves. But the case will, we hope, be carried to the Supreme Court, where the decision will settle the law in such a manner as to put these questions at rest. I. F. R.

United States District Court, Western District of Missouri. In Bankruptcy.

IN RE DETERT.

Where a deed of trust of a homestead is set aside on the ground of being a preference, the homestead rights of the fraudulent grantor are restored, and the same result will follow where the preference is surrendered under the 23d section of the bankrupt law.

Where a creditor who has received a conveyance which is fraudulent on the ground of being a preference, files a consent that all the creditors may share in the property thus conveyed, such consent operates as a surrender of his preference.

THE bankrupt filed his petition, praying to have $1500 set apart to him out of the assets of the estate in lieu of a homestead. It appeared from the evidence that the bankrupt was indebted to Comstock & Co., who sued him and recovered judgment, to delay the collection whereof he conveyed and assigned his property, including his homestead, to Charles F. Meyer, in trust for himself and certain other creditors named in the deed; that within four months after the making of this conveyance he was declared bankrupt on a creditor's petition; that said Meyer and H. B. Hamilton were elected assignees; that Meyer presented his own as well as the creditor's claims named in the trust-deed for allowance as secured; that thereupon Hamilton, his co-assignee, objected, alleging that an illegal preference was attempted thereby to be secured,